IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26-4-2006

Coram:

The Honourable Mr. Justice T.V. MASILAMANI

S.A. No.1448 of 1997

Pavadai Padayachi .. Appellant/Plaintiff

vs.

Arumugam .. Respondent/Defendant

Second Appeal against the judgment and decree dated 6.11.1996 made in A.S.No.183 of 1994 on the file of the Subordinate Judge, Cuddalore confirming the judgment and decree dated 10.8.1994 in O.S.No.623 of 1991 n the file of the District Munsif, Panruti.

For Appellant : Mr.Lakshminarayanan

For Respondent : N.A.

JUDGMENT

The plaintiff in O.S.No.623 of 1991 on the file of the District Munsif, Panruti is the appellant herein. He filed the suit for specific performance against the respondent/defendant on the basis of an agreement for sale. The respondent resisted the suit on various grounds and therefore the learned District Munsif on the basis of the pleadings of both the parties and the evidence on record and upon hearing the arguments by both sides, dismissed the suit. Aggrieved by the judgment and decree of the trial court, the appellant preferred the first appeal before the Subordinate Judge, Cuddalore in A.S.No.183 of 1994. Learned Subordinate Judge had in turn after analysing the recorded evidence in the light of the judgment and decree passed by the trial court dismissed the appeal confirming the findings rendered by the trial court. Hence the Second Appeal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The facts necessary for the disposal of this Second Appeal may be stated briefly as under:-

The appellant filed the suit for specific performance on the basis of the agreement of sale dated 31.10.1990 entered into between him and the respondent in respect of the suit property. The terms of the agreement are that the respondent agreed to sell the suit property for Rs.15,000/- and received Rs.13,000/- on the date of the agreement and that the sale deed had to be executed within one year (i.e.,) on or before 29.10.1991 after receiving the balance of Rs.2,000/-. The appellant filed the suit contending that he paid the balance of Rs.2,000/- to the respondent on 7.4.1991 and that in spite of the notice dated 17.4.1991, the respondent failed to perform his part of the contract and execute the sale deed, though he had sent a reply with false allegations. However, the respondent resisted the suit on the basis that it was only a loan transaction, as he had borrowed Rs.10,000/- from the appellant and executed the agreement for sale as per the direction of the appellant for advancing the said amount by way of loan. He has also denied the payment of the balance of sale consideration as alleged by the appellant.

3. Though both the courts below held that the appellant has succeeded in proving the genuineness of the said agreement and passing of the consideration of Rs.13,000/- on the date of the agreement, they disbelieved the evidence adduced on the side of the appellant to prove that the balance of sale consideration was paid on 7.4.1991. Hence, the courts below rendered the finding that the appellant has failed to prove his readiness and willingness to perform his part of the contract as required under law and therefore the suit and the first appeal were dismissed.

4. Heard Mr.Lakshminarayanan, learned counsel appearing for the appellant. Though the respondent received the notice, he has neither appeared in person nor represented by any counsel.

5. Learned counsel for the appellant has submitted that the courts below failed to note that the appellant had performed his part of the contract as stipulated in the agreement and that it was only the respondent who failed to comply with the terms of the contract even after the payment made by the appellant to execute the sale deed within time. Similarly, the appellant proved the payment of Rs.2,000/- by adducing satisfactory evidence and therefore the courts below erred in disbelieving such evidence. Even assuming that the receipt of the said balance of sale consideration is disputed by the respondent, the courts below should have acted on the basis of equity and decreed the suit subject to such conditions as to payment of the balance of sale consideration as per Sections 16 and 22 of the Specific Relief Act, 1963.

6. In the above circumstances, the following questions of law were formulated by this Court for consideration:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(1) Whether the courts below are right in dismissing the suit especially when the plaintiff had performed his part of the contract?

(2) Whether the courts below should not have accepted the evidence of P.W.2 and decreed the suit and its order in dismissing the suit after upholding the genuineness of Exhibit A-1 is not improper, unsound and illegal?

7. In view of the concurrent findings rendered by both the courts below regarding the factum of execution of the suit agreement Ex.A-1 as well as the payment of Rs.13,000/- by the appellant to the respondent on the date of the agreement, the only question that remains to be considered is whether the reasons assigned by the trial court as well as by the first appellate court to deny the relief of specific performance to the appellant are sustainable. Further, in view of the evidence available on record to show and prove that the appellant was always ready and willing to perform his part of the contract as required under Section 16(c) of the Specific Relief Act, 1963, it has become necessary to consider the above questions of law.

8. The provision of law under Section 16(c) of the said Act reads as under:-

"16. personal bars to relief.-- Specific performance of a contract cannot be enforced in favour of a person--

.. ..

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.-- For the purposes of clause (c)--

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

9. Learned counsel for the appellant has straightaway drawn the attention of this court to the specific averments in paragraph (3) of the plaint which reads as follows:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"The plaintiff was and is always ready and willing to perform his part of the contract."

Further according to him, in view of such specific pleadings of the appellant and considering the finding rendered by the courts below that the appellant failed to prove the payment of the balance of sale consideration of Rs.2,000/-, then the appellant should have been directed to deposit the balance of sale consideration with or without interest within a stipulated period so as to render equitable relief in the above circumstances of the case.

10. Further the learned counsel for the appellant has relied on the decision JUGRAJ SINGH v. RAJ SINGH (AIR 1995 S.C. 945) wherein (vide) paragraph 3, the following principle of law has been laid down by the Apex Court:-

"Section 16(c) of the Specific Relief Act, 1963 provides that the plaintiff must plead and prove that he has always been ready and willing to perform his part of the essential terms of the contract. The continuous readiness and willingness at all stages from the date of the agreement till the date of the hearing of the suit need to be proved. The substance of the matter and surrounding circumstances and the conduct of the plaintiff must be taken into consideration in adjudging readiness and willingness to perform the plaintiff's part of the contract."

11. Having regard to the said principle of law laid down in the decision and considering the evidence in this case, learned counsel for the appellant has argued and rightly in my opinion that the appellant has not only pleaded that he has always been ready and willing to perform his part of the contract, but also proved by adducing satisfactory evidence that in spite of the his demand through a notice issued by his counsel to the respondent, the respondent has not complied with the same, but issued a reply with false allegations and that therefore the appellant was constrained to file the suit.

WEB COPY

12. In this context, learned counsel for the appellant has also drawn the attention of this Court to the decision, K.KALPANA SARASWATHI v. P.S.S.S. CHETTIAR (AIR 1980 S.C. 512), to support his further contention that on equitable principle, the court below ought to have directed the appellant to deposit the balance of sale consideration, even though his evidence of payment of the balance amount was disbelieved. The relevant dictum of law laid down in the decision reads as follows:-

https://hcservices.ecourts.gov.in/hcservices/

"Even so, specific performance is an equitable relief and he who seeks equity can be put on terms to ensure that equity is done to the opposite party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity."

13. Similarly, as has been rightly pointed out by the learned counsel for the appellant with reference to the decision, SATYANARAYANA v. YELLOJI RAO (AIR 1965 S.C. 1405), unless the respondent is able to prove waiver or abandonment of the right on the part of the appellant, the equitable relief of specific performance ought to have been granted in favour of the appellant. Since according to him, in this case, there is no proof of waiver or abandonment of the right on the part of the appellant, the judgments and decrees rendered by the courts below have to be set aside.

14. Similarly, the learned counsel for the appellant has also cited the decision of this Court, SARASWATHI AMMAL v. JAYARAMA RAO AND OTHERS (1999-1-L.W. 683), in support of his further argument that the respondent is also duty bound to prove that he has come to court with clean hands so as to seek equity at the hands of the court and in this respect he has pointed out that the inconsistent pleadings of the respondent as against the agreement, Ex.A-1 would go to show and prove that he has not come with clean hands. Moreover, he has contended with reference to the evidence that the property purchased by the respondent under Ex.A-4, the registered sale deed dated 23.5.1981 was agreed to be sold to the appellant on 30.10.1990 (vide) Ex.A-1, agreement for Rs.15,000/- and therefore he has argued and in my opinion rightly that in the absence of any clinching evidence adduced by the respondent, his pleadings that the property is worth Rs.65,000/- is unbelievable. Therefore I am inclined to accept the contention put forth by the learned counsel for the appellant that the respondent has not come with clean hands so as to plead equity in this case.

15. For the aforesaid reasons, this Court is of the considered view that the courts below were not correct in refusing to grant the relief of specific performance in favour of the appellant, even though he has performed his part of the contract and in spite of the fact that he has pleaded and proved that he is always ready and willing to perform his part of the contract. In any view of the matter the judgments decrees of both the courts are liable to be set aside as they have resulted in grave injustice to the appellant.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

16. Accordingly, the Second Appeal is allowed with costs throughout setting aside the judgments and decrees passed by the courts below and the suit is decreed as prayed for directing the appellant to deposit the balance of sale consideration of Rs.2,000/- with interest at 12% p.a. from the date of the agreement (i.e.,) 31.10.1990 till the date of deposit before the trial court on or before 31st July, 2006.

dpp

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge, Cuddalore.
2. The District Munsif, Panruti.
3. The Section Officer, V.R.Section, High Court, Madras.

1 cc To Mr.V.Raghavachari, Advocate, SR.22148.

S.A. No.1448 of 1997

RA(CO)
RVL 07.06.06

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/